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199 055 5010 - Williamson
Perma-Treat of Illinois
ILD 063 698 971
Compliance file

October 1, 1991

Bryan S. White, Manager
Compliance Unit
Planning and Reporting Section
Division of Land Pollution Control
Illinois Environmental Protection Agency
2200 Churchill Road
Springfield, IL 62706

Re: 1990555010 -- Williamson County
Perma-Treat of Illinois
ILD063698971
Compliance File

Dear Mr. White:

We are the attorneys for Perma-Treat of Illinois, Inc. Today we were FAX'd a copy of your September 19, 1991 Compliance Inquiry Letter, with the request that we advise the client. We have already made contact with the client, but in order to meet your deadline of submitting a written response within fifteen (15) calendar days of September 19, 1991, it does not appear that we can complete our inquiry in time to meet that deadline, so we would request an extension of ten (10) days, through and including October 14, 1991, to reply.

Please be assured that this request is not being made for purposes of delay, but is being requested only so that we might fully apprise ourselves of the facts and circumstances, so that we might prepare a full and complete response by the new deadline.

Thank you in advance for your attention to this request.
Kindly respond directly to the undersigned.

Very truly yours,

MOHAN, ALEWELT, PRILLAMAN & ADAMI

By

Fred C. Prillaman

FCP/sew

cc: Deanne Virgin

Gerald Steele

Perma-Treat of Illinois, Inc.

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October 18, 1991

Deanne Virgin
Compliance Unit
Planning and Reporting Section
Illinois Environmental Protection Agency
Division of Land Pollution Control
2200 Churchill Road
P.O. Box 19276
Springfield, IL 62794-9276

Re: 1990555010-Williamson County
Perma-Treat of Illinois
ILDO63698971
Compliance File

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OCT 21 1991

IEPA-DLPC

Dear Ms. Virgin:

This letter is in response to the Compliance Inquiry Letter dated September 19, 1991, directed to our client, Perma-Treat of Illinois. This letter is directed to you at this time pursuant to the instructions in that Compliance Inquiry Letter, as well as pursuant to extensions for the response time discussed between myself and Mr. G. E. Steele, the Agency inspector responsible for this file.

Before addressing the specific apparent violations identified in the Compliance Inquiry Letter, it would be useful to explain our circumstances and position in a narrative fashion. As the inspection report notes, Perma-Treat is in the business of producing treated wood products, using a solution that includes copper, chrome and arsenic. The only hazardous waste from Perma-Treat's operations is that removed from its containment pit¹; the waste is in the form of mud and bark, and is identified as RCRA D004/D007 wastes. Until the waste is actually physically removed from the pit, it remains an integral part of

¹Although Mr. Steele's investigation narrative suggests that Perma-Treat has two pits (a "door" pit and a "containment" pit), in actuality only one large containment pit exists, which extends from the cylinder area through the tank area identified in Mr. Steele's narrative drawing.

Perma-Treat's process, and so is not yet waste. See 35 Ill. Admin. Code §721.102(e)(1)(A) (providing that materials are not solid waste if they can be recycled by being reused as an ingredient in an industrial process).

As is also indicated in the inspection report, Perma-Treat generates approximately 2 drums worth of the waste per month. Each drum weighs approximately 300 to 400 pounds, which would be around 180 kilograms. Accordingly, Perma-Treat generates no more than 350 to 400 kilograms of this hazardous waste per month. At the time of the inspection, Perma-Treat had accumulated on-site approximately 10 drums worth of these wastes, which would weigh no more than 4,000 kilograms.

Upon accumulation of the hazardous waste, Perma-Treat contacts a transporter to remove the waste, which is done at approximately the same rate as the waste is generated -- that is, it is removed at a rate of approximately two drums per month. The waste is taken by Hickson Corporation to its Valparaiso, Indiana facility, and is then taken for ultimate disposal to Emelle, Alabama. Valparaiso, Indiana is located in excess of 200 miles from Perma-Treat's Marion, Illinois location.

Based upon the above facts, it is Perma-Treat's position that it is a small quantity generator subject to the requirements of §722.134(e) of the Pollution Control Board's RCRA regulations, 35 Ill. Admin. Code §722.134(e). Specifically, Perma-Treat generates greater than 100 kilograms but less than 1000 kilograms of the hazardous waste in each calendar month, and must offer that waste for transportation over a distance of 200 miles or more for off-site treatment, storage and disposal. Accordingly, the regulations allow Perma-Treat to accumulate that waste on-site for up to 270 days without a permit and without obtaining interim status, so long as Perma-Treat complies with the requirements of §722.134(d). It is Perma-Treat's further position that it has fully complied with those regulations.

Because Perma-Treat is a small quantity generator, most of the regulations identified in the Compliance Inquiry Letter as having apparently been violated are inapplicable. For instance, §724.550(a) indicates that the waste pile regulations are inapplicable to the extent provided by §725.101, which in turn provides at subsection(c)(7) that those provisions are inapplicable for small quantity short-term accumulating generators, such as Perma-Treat.

Mr. Steele's inspection report, and the Compliance Inquiry Report, nevertheless appear to focus upon the "waste pile" as the primary source of Perma-Treat's apparent violations. That pile consists of accumulated wastes from the pit, and at no time has it held more than 6000 kilograms. Moreover, that pile

has been accumulated since about January 7, 1991. Accordingly, as of the June 20, 1991 inspection date, fewer than 270 days had passed during which that waste had been accumulated.

Perma-Treat recognizes that some degree of ambiguity or misunderstanding exists due to the "waste pile." To avoid any such misunderstandings or ambiguities in the future, Perma-Treat intends, without admitting liability, to modify its operations to make explicit the applicability of the small quantity generator accumulation time periods. The remaining materials in the "waste pile" are being removed from Perma-Treat's property through special arrangements with a hazardous waste hauling and disposal firm from northern Indiana. Moreover, Perma-Treat plans to adjust its accumulation time to no more than 90 days on-site, to dispel any question about the legality of the temporary accumulation.

The Compliance Inquiry Letter also appears to be concerned with apparent hazardous waste spills on the ground near the "waste pile." The dirt in question has been excavated, and so the spill has been cleaned up in accordance with §722.134(d)(5)(D)(ii); it, too, is being hauled off-site pursuant to special arrangements. Perma-Treat has had that soil analyzed, and the results indicate that no arsenic or chromium is present in the non-excavated soil. A copy of the chemical report is attached hereto, for your records. Analyses of the disposed-of materials from the disposal contractor will be available to the Agency once Perma-Treat receives a copy, as will be all manifests and other required documentation. Perma-Treat will cooperate fully in allowing or securing whatever additional testing the Agency determines is necessary. Further, Perma-Treat has modified its operations, as set forth above, by eliminating the "waste pile," and also by assuring that treated and drying product is kept well clear of the treatment floor's edge; these modifications should alleviate the possibility of any such spills recurring.

Another focus of both the inspection report and the Compliance Inquiry Letter is the existence of spilled liquids near the wood storage area on the east side of the facility and in the drip track area. Once again, this issue arises apparently through some degree of ambiguity or misunderstanding. It is Perma-Treat's position that these liquids identified during the inspection do not constitute "wastes" in the first instance, and so can not and do not also constitute "hazardous wastes," or "spills." The entire floor area of Perma-Treat's facility, including the two locations identified as harboring "spills," slopes toward the containment pit, with a total 12 to 16 inch slope. The liquids seen by Mr. Steele are still in Perma-Treat's process, inasmuch as they flow into the containment pit for eventual reuse in treating lumber. Section 721.102(e)(1)(A) expressly provides that materials are not solid wastes if they

can be recycled by being reused as ingredients in an industrial process. In turn, §721.103 provides that hazardous wastes are particular forms of solid waste. Since the liquids in question are being reused as ingredients in Perma-Treat's industrial process, they are not "wastes" and consequently are not "spilled" "hazardous wastes," either.

Nevertheless, once again to avoid any future misunderstandings on this point, Perma-Treat agrees to modify its procedures and policies to make unambiguous the fact that these liquids remain in Perma-Treat's process. Specifically, at the end of each working shift (which currently is only once per day), Perma-Treat will sweep all floor surfaces containing any dripped solution to expedite that solution's return to the containment pit.

Based upon and in light of the above considerations, Perma-Treat has the following specific responses to the apparent violations identified in your Compliance Inquiry Letter of September 19, 1991:

(1) §703.153: apparent violation for failing to file a Part A application for interim status under RCRA.

Response: As set forth above, Perma-Treat is a small quantity generator within the meaning of and in full compliance with §722.134(e), which expressly exempts such generators from compliance with the requirements of seeking or obtaining RCRA interim status.

(2) §725.111: apparent violation for failure to have applied for a U.S.E.P.A. identification number for Perma-Treat's facility as a storage site.

Response: Pursuant to §725.110 and §725.101(c)(7), entities such as Perma-Treat which are governed by §722.134(e) are not required to comply with the provisions of §725.111. Moreover, Perma-Treat has fully complied with the requirements of §722.134(d).

(3) §725.115(a): apparent violation for failing to conduct inspections of areas of the facility other than the drum holding area, to identify actual or potential releases or threats to human health.

Response: Pursuant to §725.110 and §725.101(c)(7), the inspections required by §725.115(a) are not required of entities such as Perma-Treat which are governed by §722.134. Moreover, Perma-Treat has fully complied with the requirements of §722.134(d).

(4) §725.115(b): apparent violation for failing to develop and follow a written schedule for inspections of areas other than the drum holding area, and for failure to note spills observed during the inspection on any inspection form.

Response: Pursuant to §725.110 and §725.101(c)(7), the requirements of §725.115(b) are inapplicable to entities such as Perma-Treat which are governed by the requirements of §722.134. Moreover, Perma-Treat has been and is in full compliance with the requirements of §722.134(d).

(5) §725.115(c): apparent violation for failing to take remedial action for spills and releases observed during the inspection.

Response: Pursuant to §725.110 and §725.101(c)(7), the provisions of §725.115(c) do not apply to entities such as Perma-Treat which are governed by §722.134, with which Perma-Treat has been and is in full compliance. Moreover, as set forth above, Perma-Treat contends that no "spills" or "releases" were present at the facility on the day of the inspection, and/or that any such spills have been remediated.

(6) §725.115(d): apparent violation for failing to include the waste pile area, or to reflect spills and releases observed during the inspection, in the facility's inspection log.

Response: Pursuant to §725.110 and §725.101(c)(7), the provisions of §725.115(d) do not apply to entities such as Perma-Treat which are governed by §722.134. Moreover, Perma-Treat is and has been in full compliance with the requirements of §722.134(d).

(7) §725.131: apparent violation for failing to maintain and operate the facility so as to minimize the possibility of non-sudden release of hazardous waste, as evidenced by spills and releases observed at the drip track, the waste [pile], and the drum holding area.

Response: Pursuant to §722.134(d)(4), §725.131 does apply to Perma-Treat and other entities governed by §722.134. Nevertheless, Perma-Treat maintains that no violation of this section has occurred, because no spills of hazardous wastes have occurred, as set forth above, and/or that any such spills have been remediated in accordance with §722.134(d)(5)(D)(ii), and that Perma-Treat has modified its operations to alleviate the possibility of any such spills recurring.

(8) §725.135: apparent violation for failure to maintain adequate aisle space on the date of the inspection.

Response: Perma-Treat is not certain of the intentions with respect to this apparent violation because nothing in the narrative inspection report identifies this deficiency. Nevertheless, Perma-Treat intends to conduct its operations to assure full compliance with §721.135 in the future.

(9) §725.151(d): apparent violation for failure to take action consistent with the facility's contingency plan to remediate observed spills or releases in the waste pile and drum holding areas.

Response: Pursuant to §725.150 and §725.101(c)(7), the provisions of §725.151(b) do not apply to entities such as Perma-Treat which are governed by §722.134. Moreover, as set forth above, Perma-Treat maintains that it has fully complied with the requirements of §722.134(d), and that no "spills" have been or were present on the day of the inspection, and/or that any such spills have been remediated.

(10) §725.156: apparent violation for failure of the emergency coordinator to implement specific emergency procedures in response to observed spills and releases.

Response: Pursuant to §725.150 and §725.101(c)(7), §725.156 does not apply to entities such as Perma-Treat which are governed by §722.134. Moreover, as set forth above, Perma-Treat maintains that it has been and is in full compliance with the requirements of §722.134(d)(5)(D)(ii), and denies that any spill has been or was present on the day of the inspection, and/or that any such spills have been remediated.

(11) §725.173: apparent violation for failing to keep an operating record for the waste pile at the facility.

Response: Pursuant to §725.170 and §725.131(c)(7), the requirements of §725.173 do not apply to entities such as Perma-Treat which are governed by the requirements of §722.134. Moreover, Perma-Treat maintains that it has been and is in full compliance with the requirements of §722.134(d).

(12) §725.177: apparent violation for failing to submit reports of release to the Agency.

Response: Pursuant to §725.170 and §725.101(c)(7), the requirements of §725.177 do not apply to entities such as Perma-Treat which are governed by the requirements of §722.134. Moreover, Perma-Treat maintains that it has been and is in full compliance with the requirements of §722.134(d); to the extent this apparent violation concerns the "spills" identified at the

inspection, Perma-Treat also maintains that no such spills existed, and/or that any such spills have been remediated.

(13) §725.212(a): apparent violation for failure to have a written closure plan covering the waste pile.

Response: Pursuant to §725.210 and §725.101(c)(7), §725.212(a) does not apply to entities such as Perma-Treat which are governed by the requirements of §722.134. Moreover,

Perma-Treat maintains that it has been and is in full compliance with the requirements of §722.134(d).

(14) §725.242(a): apparent violation for failing to submit a written estimate of costs of closure for the waste pile.

Response: Pursuant to §725.240(a) and §725.101(c)(7), the requirements of §725.242(a) do not apply to entities such as Perma-Treat which are governed by the requirements of §722.134. Moreover, Perma-Treat maintains that it has been and is in full compliance with the requirements of §722.134(d).

(15) §725.353(a): apparent violation for failure to meet minimum technical requirements for a waste pile from which leachate or runoff is a hazardous waste.

Response: Pursuant to §725.350 and §725.101(c)(7), §725.353 does not apply to entities such as Perma-Treat governed by the requirements of §722.134. Moreover, Perma-Treat maintains that it has been and is in full compliance with the requirements of §722.134(d). Further, Perma-Treat also maintains that any "leachate" or "runoff" from the "waste pile" in question is not a hazardous waste, but is part of its process and is accordingly returned to Perma-Treat's containment pit.

(16) §725.353(b): apparent violation for placing wastes which contain free liquids onto a waste pile from which leachate or runoff is a hazardous waste.

Response: Pursuant to §725.350 and §725.101(c)(7), the provisions of §725.353 do not apply to entities such as Perma-Treat which are governed by §722.134. Moreover, Perma-Treat maintains that it has been and is in full compliance with §722.134(d). Further, Perma-Treat maintains that any "leachate" or "runoff" from the "waste pile" in question is not a hazardous waste, but is part of its process and is accordingly returned to Perma-Treat's containment pit.

Deanne Virgin
Springfield, IL

October 18, 1991
Page 8

(17) §725.354: apparent violation for failing to install minimum technical design requirements, such as liners and leachate collection systems, for the waste pile.

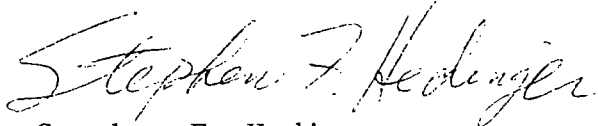
Response: Pursuant to §725.350 and §725.101(c)(7), the provisions of §725.354 do not apply to entities such as Perma-Treat which are governed by the provisions of §722.134. Moreover, Perma-Treat maintains that it has been and is in full compliance with the requirements of §722.134(d).

We trust that this response will satisfy your concerns arising from the Agency's June 20, 1991 inspection of Perma-Treat's facility. In the event further information or discussion is required, though, please feel free to contact the undersigned at your convenience.

Very truly yours,

MOHAN, ALEWELT, PRILLAMAN & ADAMI

By


Stephen F. Hedinger

SFH/drm